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ADMIRALTY.

1. In 1891, the navigation of steamers upon the Great Lakes and their connecting waters was governed by the Congressional Rules and Regulations of April 29, 1864, Rev. Stat. § 4233, and, so far as the manœuvres of the vessels took place in American waters, by the Supervising Inspectors' rules in force at that time. *The New York*, 187.
2. The Revised International Regulations of 1885 apply only to vessels navigating the high seas and coast waters of the United States, and not to those navigating the Great Lakes. *Ib.*
3. A court of admiralty may properly take judicial notice of an act of the parliament of Canada regulating the navigation of Canadian waters, passed in 1886, as a law of the sea and of general application. *Ib.*
4. Where a Canadian statute was introduced and treated as evidence by consent of counsel upon a motion for a rehearing in the District Court, though it did not appear of record, and, in obedience to a writ of certiorari from the Court of Appeals, was certified up to the Court of Appeals by the clerk of the District Court as a true copy of the original act as published, it was held that the Court of Appeals should have treated the act as properly before it, notwithstanding the clerk did not certify it to be a part of the record. *Ib.*
5. The steamer Conemaugh, while descending the Detroit River at night, discovered in her path a long tow, which was rounding to on the American side and was temporarily taking up three fourths of the navigable channel, and starboarded in order to pass between the rear barges and the Canadian channel bank. While proceeding under her starboard wheel, she made the lights of the propeller New York ascending the river. She blew her three signals of two whistles each, to neither of which the New York responded. On discovering the rear barges of the tow, she ported to follow them down the river, and upon discovering the New York in dangerous proximity, put her helm hard-a-starboard and her engines at full speed. The New York was at the same time coming up under a port wheel, and struck the Conemaugh on the starboard side and sank her. *Held*, that the Conemaugh was in fault (1) for not stopping when the New York failed to answer her

signals; (2) for porting and then starboarding in order to cross the bow of the New York. *Ib.*

6. The New York, while ascending the river, made the lights of the tow, exchanged signals of one whistle with the propeller in charge of it, and ported her wheel to pass between the rear barges and the Canadian channel bank. She heard no signals and did not make out the colored lights of the Conemaugh. As she passed the rear barges she starboarded to resume her course, and struck the Conemaugh as above stated. *Held:* That she was in fault (1) for an inefficient lookout; (2) for failing to answer the repeated signals of the Conemaugh; and (3) for failure to stop after she made the white light of the Conemaugh, until her course and movements had been satisfactorily ascertained. *Ib.*
7. The fact that the officers of a steamer fail to see the signal lights of an approaching steamer, which are seen by other witnesses in the neighborhood, or to hear the whistles of such steamer which were plainly audible to others, is, unexplained, conclusive evidence of a defective lookout. *Ib.*
8. It is the duty of a steamer receiving signal whistles from an approaching steamer to answer them promptly; but it is also the duty of such approaching steamer, on the failure of the other to answer, to stop until her silence is explained and her course ascertained with certainty. *Ib.*
9. Where the owners of a cargo of a steamer, which has been sunk by collision occasioned by the mutual fault of two colliding steamers, intervene for their interest in a suit instituted by the owners of the carrying vessel against the other, they are entitled to recover full damages against such other vessel, notwithstanding the damages to such vessels are divided as between themselves. *Ib.*
10. On the 20th of April, 1898, a joint resolution of Congress was approved by the President declaring that the people of Cuba are, and of right ought to be, free and independent. On the same day the Minister of Spain at Washington demanded his passport, and the diplomatic relations of Spain with the United States were terminated. On the 22d of the same April a blockade of a part of the coast of Cuba was instituted. On the 23d of the same month, in a proclamation of the Queen Regent of Spain it was declared that a state of war was existing between Spain and the United States. On the 26th of the same month the President issued a proclamation, declaring that a state of war existed between the United States and Spain, the fourth and fifth articles of which proclamation were as follows: "4. Spanish merchant vessels in any ports or places within the United States shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were

taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to the Spanish vessels having on board any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government. 5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded." The Pedro was built in England, sailed under the British flag till 1887, and then was transferred to a Spanish corporation, and sailed under the Spanish flag. Sailing from Antwerp she arrived at Havana with a cargo April 17, 1899. She remained there five days, discharged her cargo and left for Santiago April 22. At 6 o'clock on that evening, when about 15 miles east of the Morro, and 5 miles north of the Cuban coast, she was captured by the New York, of the blockading fleet, sent to Key West, and there libelled and condemned. *Held*, (1) That the language of the proclamation was plain, and not open to interpretation; (2) that the Pedro, not being "in any port or place within the United States," but, on the contrary, being in Havana, a port of the enemy, did not come within the fourth article of the proclamation; (3) that it did not come within the fifth article, nor within the reasons usually assigned for exemption; (4) that it must be assumed that she was advised of the strained relations between the United States and Spain; (5) that being owned by a Spanish corporation, having a Spanish registry, and sailing under a Spanish flag and a Spanish license, and being officered and manned by Spaniards, she must be deemed to be a Spanish ship, although she was insured against risks of war by British underwriters — that fact being immaterial. *The Pedro*, 354.

11. This was an appeal from a decree condemning the Guido as a prize of war. On the facts, concisely stated in the opinion of the court, it is *held*, following *The Pedro*, *ante*, 354, that the case was properly disposed of below. *The Guido*, 382.

12. In the fourth clause of the President's proclamation of April 26, 1898, issued after the declaration of war against Spain by Congress, April 25, 1898, it was said: "4. Spanish merchant vessels in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places, and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; *provided*, that nothing herein contained shall apply to Spanish vessels having on board any officer in

the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government." The Buena Ventura, a Spanish vessel, being at Cuba in March, 1898, was chartered to proceed with all convenient speed to Ship Island, Mississippi, and there to take on board a cargo of lumber for Rotterdam. Under this charter she arrived at Ship Island in the latter part of March, 1898, and took on a cargo of lumber for Rotterdam. She cleared at the custom house on the 14th of April for Rotterdam, but was detained by low water until April 19, when, between 8 and 9 A.M., she proceeded on her voyage. While so proceeding she was captured by a man-of-war of the United States about ten miles off the Florida coast. Up to the moment of capture all her officers were ignorant of the existence of a state of war, and the vessel, at the time of her capture, was following the ordinary course of her voyage. After hearing in the District Court of the United States the Buena Ventura was condemned and sold under a decree of court, and the proceeds were deposited to abide the event of an appeal from that decree. *Held:* (1) That an innocent vessel like the Buena Ventura, which had loaded within a port of the United States, and had sailed therefrom before the commencement of the war, was entitled, under the proclamation, to continue its voyage, that being clearly within the intention of the President, under the liberal construction which this court is bound to give to that document; (2) that the reversal of the judgment below, condemning the Buena Ventura, should be without costs or damages in her favor; (3) that the moneys arising from the sale of the vessel must be paid to the claimant, deducting only the expenses properly incident to her custody and preservation up to the time of sale. *The Buena Ventura*, 384.

13. At the breaking out of the recent war with Spain, two fishing smacks — the one a sloop, 43 feet long on the keel and of 25 tons burden, and with a crew of three men, and the other a schooner 51 feet long on the keel and of 35 tons burden, and with a crew of six men — were regularly engaged in fishing on the coast of Cuba, sailing under the Spanish flag, and each owned by a Spanish subject, residing in Havana; her crew, who also resided there, had no interest in the vessel, but were entitled to shares, amounting in all to two thirds, of her catch, the other third belonging to her owner; and her cargo consisted of fresh fish, caught by her crew from the sea, put on board as they were caught, and kept and sold alive. Each vessel left Havana on a coast fishing voyage, and sailed along the coast of Cuba about two hundred miles to the west end of the island; the sloop there fished for twenty-five days in the territorial waters of Spain; and the schooner extended her fishing trip a hundred miles farther across the Yucatan Channel, and fished for eight days on the coast of Yucatan. On her return, with her cargo of live fish, along the coast of Cuba, and when

near Havana, each was captured by one of the United States blockading squadron. Neither fishing vessel had any arms or ammunition on board; had any knowledge of the blockade, or even of the war, until she was stopped by a blockading vessel; made any attempt to run the blockade, or any resistance at the time of her capture; nor was there any evidence that she or her crew was likely to aid the enemy. *Held*, that both captures were unlawful, and without probable cause. *The Paquete Habana*, 677.

See INTERNATIONAL LAW.

ATTACHMENT.

See INSOLVENT LAWS OF STATES.

BANKRUPTCY.

The decision in *McLish* v. *Roff*, 141 U. S. 651, that appeals or writs of error in cases in which the jurisdiction of the court was in issue, can be taken directly to this court only after final judgment, and the decision in *United States* v. *Rider*, 163 U. S. 132, that review by appeal, writ of error and otherwise, must be as prescribed by the judiciary act of March 3, 1891, c. 517, and that the use of a certificate was limited by it to a certificate by the courts below, after final judgment, of questions made as to their own jurisdiction, and to the certificate by the Circuit Court of Appeals of questions of law, in relation to which the advice of this court is sought as therein provided, are applicable to cases arising under the bankruptcy act of July 1, 1898, c. 541; and, as this case has not gone to judgment, the certificate must be dismissed. *Bardes* v. *Hawarden First Nat. Bank*, 526.

CASES AFFIRMED OR FOLLOWED.

See BANKRUPTCY.

CASES MODIFIED OR OVERRULED.

See RAILROAD, 5.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. Questions of public policy, as affecting the liability for acts done, or upon contracts made and to be performed, within one of the States of the Union — when not controlled by the Constitution, laws or treaties of the United States, or by the principles of the commercial or mercantile law or of general jurisprudence, of national or universal application — are governed by the law of the State, as expressed in its own

constitution and statutes, or declared by its highest court. *Hartford Fire Insurance Co.* v. *Chicago, Milwaukee & St. Paul Railway Co.*, 91.

2. Sections 75 and 76, of Chapter 237 of the Laws of New Jersey of 1898, contained the following provisions: "Sec. 75. The Supreme Court, court of oyer and terminer and court of quarter sessions, respectively, or any judge thereof, may on motion in behalf of the State, or defendant in any indictment, order a jury to be struck for the trial thereof, and upon making said order the jury shall be struck, served and returned in the same manner as in case of struck juries ordered in the trial of civil causes, except as herein otherwise provided." "Sec. 76. When a rule for a struck jury shall be entered in any criminal case, the court granting such rule may, on motion of the prosecutor, or of the defendant, or on its own motion, select from the persons qualified to serve as jurors in and for the county in which any indictment was found, whether the names of such persons appear on the sheriff's book of persons qualified to serve as jurors in and for such county or not, ninety-six names, with their places of abode, from which the prosecutor and the defendant shall each strike twenty-four names in the usual way, and the remaining forty-eight names shall be placed by the sheriff in the box in the presence of the court, and from the names so placed in the box the jury shall be drawn in the usual way." By sections 80 and 81 it was provided that where there is no struck jury, and the party is on trial for murder, he is entitled to twenty peremptory challenges, and the State to twelve; but in the case of a "struck jury" each party is allowed only five peremptory challenges. *Held:* (1) That these provisions are not in conflict with the Constitution of the United States; (2) that the highest court of the State of New Jersey having held that they are not in conflict with the constitution of that State, this court is foreclosed on that question by that decision. *Brown* v. *New Jersey*, 172.

3. Under the grant of power to Congress, contained in section 8 of Article I of the Constitution, "to regulate commerce with Foreign Nations and among the several States, and with Indian Tribes," that body may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract shall be, when carried out, to directly and not as a mere incident to other and innocent purposes, regulate to any extent interstate or foreign commerce. *Addyston Pipe & Steel Company* v. *United States*, 211.

4. The provision in the Constitution regarding the liberty of the citizen is to some extent limited by this commerce clause; and the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally and collaterally, regulate, to a greater or less degree, commerce among the States. *Ib.*

5. Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce; nor does it acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State, by reason of the fact that the combination also covers and regulates commerce which is interstate. *Ib.*

6. The Providence Hospital of the city of Washington was incorporated by the act of Congress of August 7, 1864, c. 50, 13 Stat. 43, which gave to it "full power and all the rights of opening and keeping a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of the said corporation." By the act of March 3, 1897, c. 387, 29 Stat. 665, making appropriations for the District of Columbia, an appropriation of $30,000 was made for two isolating buildings, to be constructed in the discretion of the Commissioners of the District, on the grounds of two hospitals, and to be operated as a part of such hospitals. Under that authority the Commissioners made an agreement with the Providence Hospital, which was a private hospital, in charge of sisters of the Roman Catholic Church, for the construction of an isolating building or ward on the hospital grounds, and for the receipt therein of poor patients sent there by the Commissioners, and for payments by the District on that account to the hospital. *Held*, that the agreement was one which it was within the power of the Commissioners to make; and that it did not conflict with the provision in Article I of the Amendments to the Constitution that "Congress shall make no law respecting an establishment of religion." *Bradfield* v. *Roberts*, 291.

7. The following provisions in the first section of the act of the legislature of Indiana approved by the Governor of that State on the 4th day of March, 1893, viz.: "That every railroad or other corporation, except municipal, operating in this State, shall be liable for damages for personal injury suffered by any employé while in its service, the employé so injured being in the exercise of due care and diligence, in the following cases: *First.* When such injury is suffered by reason of any defect in the condition of ways, works, plant, tools and machinery connected with, or in use in the business of such corporation, when such defect was the result of negligence on the part of the corporation, or some person intrusted by it with the duty of keeping such way, works, plant, tools or machinery in proper condition: *Second.* Where such injury resulted from the negligence of any person in the service of such corporation, to whose order or direction the injured employé at the time of the injury was bound to conform, and did conform: *Third.* Where such injury resulted from the act or omission of any person done or made in obedience to any rule, regulation or by-law of such corporation, or in obedience to the particular instructions given by any

person delegated with the authority of the corporation in that behalf: *Fourth.* Where such injury was caused by the negligence of any person in the service of such corporation who has charge of any signal, telegraph office, switch yard, shop, round house, locomotive engine or train upon a railway, or where such injury was caused by the negligence of any person, co-employé or fellow-servant engaged in the same common service in any of the several departments of the service of any such corporation, the said person, co-employé or fellow-servant at the time acting in the place and performing the duty of the corporation in that behalf, and the person so injured obeying or conforming to the order of some superior at the time of such injury, having the authority to direct; that nothing herein shall be construed to abridge the liability of the corporation under existing laws," as they are construed and applied by the Supreme Court of that State, are not invalid, and do not violate the Fourteenth Amendment to the Constitution of the United States. *Tullis* v. *Lake Erie & Western Railroad Co.*, 348.

8. The plaintiffs in error complained that the Board of Education used the funds in its hands to assist in maintaining a high school for white children, without providing a similar school for colored children. The substantial relief asked for was an injunction. The state court did not deem the action of the Board of Education in suspending temporarily and for economic reasons the high school for colored children a sufficient reason why the defendant should be restrained by injunction from maintaining an existing high school for white children. It rejected the suggestion that the Board proceeded in bad faith or had abused the discretion with which it was invested by the statute under which it proceeded, or had acted in hostility to the colored race. *Held*, that under the circumstances disclosed, this court could not say that this action of the state court was, within the meaning of the Fourteenth Amendment, a denial by the State to the plaintiffs and to those associated with them, of the equal protection of the laws, or of any privileges belonging to them as citizens, of the United States. *Cumming* v. *Richmond County Board of Education*, 528.

9. While all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective States, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land. *Ib.*

See CONTRACT, 1;
INTERSTATE COMMERCE COMMISSION;
LA ABRA SILVER MINING COMPANY;
TAX AND TAXATION, 2.

B. CONSTITUTION OF STATES.

Louisiana. *See* NEW ORLEANS DRAINAGE ASSESSMENTS.

CONTRACT.

1. A lease to a commercial partnership from a railroad corporation of a strip of its land by the side of its track in the State of Iowa, for the purpose of erecting and maintaining a cold storage warehouse thereon, contained an agreement that the corporation should not be liable to the partnership for any damage to the building or contents, by fire from the locomotive engines of the corporation, although owing to its negligence. At the trial of an action brought in the Circuit Court of the United States by the partnership against the corporation to recover for damage to the building and contents by fire from its locomotive engines, owing to its negligence, under a statute of the State making any railroad corporation liable for damage to property of others by fire from its locomotive engines, the plaintiff contended that the agreement was void as against public policy. It appeared that, since this lease, the highest court of the State, in an action between other parties, had at first held a like agreement to be void as against public policy, but, upon a rehearing, had reversed its opinion, and entered final judgment affirming the validity of the agreement; and it also appeared that its final decision was not inconsistent with its decision or opinion in any other case. *Held*, that the question of the validity of the agreement was one of statutory and local law, and not of the commercial law, or of general jurisprudence; and that the final decision of the state court thereon was rightly followed by the Circuit Court of the United States. *Hartford Fire Insurance Co.* v. *Chicago, Milwaukee & St. Paul Railway Co.*, 91.
2. The United States, through an officer of Engineers, contracted with the appellees to excavate rock within a fixed time. The contract contained the following provisions among others: "If, in any event, the party of the second part shall delay or fail to commence with the delivery of the material or the performance of the work on the day specified herein, or shall, in the judgment of the engineer in charge, fail to prosecute faithfully and diligently the work in accordance with the specifications and requirements of this contract, then in either case the party of the first part, or his successor legally appointed, shall have power, with the sanction of the chief of Engineers, to annul this contract by giving notice in writing to that effect to the party or parties (or either of them) of the second part, and upon the giving of such notice all money or reserved percentage due or to become due to the party or parties of the second part by reason of this contract shall be and become forfeited to the United States; and the party of the first part shall be thereupon authorized, if an immediate performance of the work or delivery of the materials be, in his opinion, required by

the public exigency, to proceed to provide for the same by open purchase or contract, as prescribed in section 3709 of the Revised Statutes of the United States; provided, however, that if the party or parties of the second part shall, by freshet, ice or other force or violence of the elements, and by no fault of his or their own, be prevented either from commencing or completing the work or delivering the materials at the time agreed upon in this contract, such additional time may in writing be allowed him or them for such commencement or completion as, in the judgment of the party of the first part or his successor, shall be just and reasonable; but such allowance and extension shall in no manner affect the rights or obligations of the parties under this contract, but the same shall subsist, take effect and be enforceable precisely as if the new date for such commencement or completion had been the date originally herein agreed upon." *Held*, that, under a proper construction of this contract, the right or privilege of the contractors, if they failed to complete their work within the time limited, to have a further extension or extensions of time, depended upon the judgment of the engineer in charge when applied to to grant such extension; and that no allegation or finding is shown in this record sufficient to justify the court in setting aside the judgment of the engineer as having been rendered in bad faith, or in any dishonest disregard of the rights of the contracting parties. *United States* v. *Gleason*, 588.

See JURISDICTION, A, 4.

COPYRIGHT.

1. Section 4966 of the Revised Statutes, enacting that "any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just," is not a penal statute and neither provides for the recovery of a penalty nor a forfeiture. *Brady* v. *Daly*, 148.
2. This action, being brought to recover damages for the violation of a dramatic copyright, and not being one to recover either a penalty or a forfeiture, the Circuit Court had jurisdiction of it by virtue of Rev. Stat. § 629, Subdivision 9, which confers upon Circuit Courts jurisdiction of all suits at law or in equity arising under the patent or copyright laws of the United States. *Ib.*
3. In the absence of any Federal statute of limitations, an action like this is limited by the limitation existing for the class of actions to which it belongs in the State where it was brought. *Ib.*
4. The question, as an original one, of how far a copyright of a play protects any particular scene therein from being publicly produced or

represented by another, aside from the dialogue contained in the play, is not before the court in this case. *Ib.*

5. There was no election of an inconsistent remedy, which would bar the plaintiff from recovering in this action. *Ib.*
6. In an action under Rev. Stat. § 4965 to recover a penalty of one dollar for every copy of an engraving or photograph infringing the copyright of another, the plaintiff's recovery is limited to copies actually found in the possession of the defendant, and does not extend to copies already sold and put in circulation. *Bolles* v. *Outing Company*, 262.

CORPORATION.

1. Under the laws of the State of New York, providing for the organization of manufacturing corporations, such corporations are not authorized to purchase the stock of a rival corporation, for the purpose of suppressing competition and obtaining the management of such rival. *De La Vergne Co.* v. *German Savings Institution*, 40.
2. Unless express permission be given to do so, it is not within the general powers of a corporation to purchase stock of other corporations for the purpose of controlling their management. *Ib.*
3. Where an action is brought upon a contract by a corporation to purchase such stock for such purpose, it is a good defence that the corporation was prohibited by statute from entering into it; even though the corporation may be compelled, in an action on *quantum meruit*, to respond for the benefit actually received. *Ib.*

COURT OF CLAIMS.

See LA ABRA SILVER MINING COMPANY, 4.

DAMAGES.

See COPYRIGHT, 6.

DISTRICT OF COLUMBIA.

The right given to a married woman by section 728, Revised Statutes of the District of Columbia, "to devise and bequeath her property," applies to all her property, and is not limited by the language of a prior act, from which this section was taken, to such as she had *not* acquired by gift and conveyance from her husband. *Hamilton* v. *Rathbone*, 414.

DIVORCE.

1. No appeal lies to this court from a decree of the Supreme Court of a Territory granting or refusing a divorce. *Simms* v. *Simms*, 162.
2. From a decree of the Supreme Court of a Territory, dismissing the suit

of a husband for a divorce, and awarding to the wife alimony and counsel fees, amounting in all to more than the sum of $5000, an appeal lies to this court so far as regards the sum of money. *Ib.*

3. The disclaimer in *Barber* v. *Barber*, 21 How. 582, 584, of "any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony, either as an original proceeding in chancery or as an incident to a divorce *a vinculo*, or to one from bed and board," has no application to the jurisdiction of the courts of a Territory, or to the appellate jurisdiction of this court over those courts. *Ib.*
4. The statutes of the Territory of Arizona, authorizing any party, in whose favor a judgment for a sum of money has been rendered in a district court of the Territory, to file in that court, or in the Supreme Court of the Territory on appeal, a remittitur or release of part of the judgment, are applicable to a wife in whose favor a decree for alimony and counsel fees has been made in a suit brought against her by her husband for a divorce; and such a release by her attorneys of record of part of the sum awarded by the district court, if filed and recorded in the Supreme Court of the Territory, while the case is there pending on appeal, is such a substantial and sufficient compliance with the statute (although the release itself is not attested by the clerk and under his seal) as to make it the duty of the court to give effect to the release. *Ib.*
5. When a party who has recovered judgment, in a district court of a Territory, for a sum of money sufficient to sustain the appellate jurisdiction of this court from the Supreme Court of the Territory, exercises a right given by the territorial statutes of remitting, by a release filed and recorded in that court while the case is there pending on appeal, so much of the judgment as will reduce it below the jurisdictional amount, and that court ignores the release and affirms the judgment of the district court, this court, on appeal by the other party, will modify the judgment of the Supreme Court of the Territory so as to stand as a judgment for the reduced sum, and will affirm the judgment as so modified, without considering the merits of the case. *Ib.*

EJECTMENT.

See PRACTICE, 2.

EXCEPTION.

See PRACTICE, 1.

FINDINGS OF FACT.

See LA ABRA SILVER MINING COMPANY, 4.

HABEAS CORPUS.

It is again held that judgments of the state courts in criminal cases should not be reviewed by Federal courts through writs of *habeas corpus*, but the proper remedy in such cases, when it is claimed that some right under the Constitution of the United States has been denied the person convicted, is by writ of error. *Markuson* v. *Boucher*, 184.

INDIAN.

1. A good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States. The question in every case is whether the terms of the treaty are such as to manifest the intention of the parties to make a present grant to the persons named. *Jones* v. *Meehan*, 1.
2. A treaty between the United States and an Indian tribe must be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians. *Ib.*
3. When the United States, in a treaty with an Indian tribe, and as part of the consideration for the cession by the tribe of a tract of country to the United States, makes a reservation to a chief or other member of the tribe of a specified number of sections of land, whether already identified, or to be surveyed and located in the future, the treaty itself converts the reserved sections into individual property; the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of a complete title in fee simple; and that title is alienable by the grantee at his pleasure, unless the United States, by a provision of the treaty, or of an act of Congress, have expressly or impliedly prohibited or restricted its alienation. *Ib.*
4. The effect of the treaty of October 2, 1863, between the United States and the Red Lake and Pembina bands of Chippewa Indians, by which those bands ceded to the United States all their right, title and interest in a large tract of country, and by which "there shall be set apart from the tract hereby ceded a reservation of six hundred and forty acres near the mouth of the Thief River for the chief Moose Dung," was to grant him an alienable title in fee in the quantity of land at the designated place, subject only to its selection in due form, and to the definition of its boundaries by survey and patent. *Ib.*
5. The right of inheritance, at the time of the death of the grantee in 1872, in land granted in fee by the United States by an Indian treaty to a member of an Indian tribe, whose tribal organization was still recognized by the Government of the United States, is controlled by the laws, usages and customs of the tribe, and not by the law of the State in which the land lies, nor by any action of the Secretary of the Interior. *Ib.*

INHERITANCE, RIGHT OF.

See INDIAN, 5.

INSOLVENT LAWS OF STATES.

An attachment regularly made in Rhode Island at the suit of a citizen of Rhode Island, of a debt due from a Rhode Island corporation to a citizen of Massachusetts, the day after the latter had filed in Massachusetts a petition for the benefit of the Massachusetts insolvent laws, but eight days before the publication of notice of the issue of a warrant on that petition, is a valid attachment, and is not dissolved by a subsequent assignment under those laws, notwithstanding the provision thereof dissolving attachments of the property of an insolvent debtor, made within four months before the first publication of such notice, that provision having no extra-territorial effect. *King* v. *Cross*, 396.

INSURANCE.

This is a case where the owners of a cargo of sugar had insured the same in the Atlantic Mutual Insurance Company, on and before April 29, 1893, at and for the sum of $166,145; and had, on April 29, 1893, insured the profits on the cargo against total loss only in the sum of $15,000 in the Insurance Company of North America. On July 6, 1893, the ship, while on her voyage, stranded on the coast of Newfoundland, became a total loss, and the voyage came to an end. The master, representing all concerned, contracted with local fishermen to give them one half of the sugar they could save. On July 8, 1893, the insurers of the cargo, having been notified of the disaster, took charge and possession of the remnants of the cargo, and purchased from the salvors the portion which, under the agreement with the master, was theirs. The sugar was then transported by a vessel chartered by the insurers, and on their account, to Montreal. The value of the sugar that reached Montreal was about $20,000, and the expenses, salvage charges and the additional freight from Newfoundland to Montreal, paid by the Atlantic Mutual Insurance Company, exceeded $11,000. The insurers on the cargo settled with the refining company as for a total loss under its policy for $166,145, and the sugar saved was turned over to the refining company in part settlement of that sum on the basis of the average *pro rata* policy valuation. The value of the entire cargo on April 29, 1893, when the insurance on profits was effected, was alleged in the libel and admitted in the answer to have been about $181,000. The insurance company contested its liability upon the policy on profits on the ground, chiefly, that the receipt by the libellant of a portion of the sugars, viz., about $20,000 in value, prevented the loss from being total within the terms of the policy. *Held*, (1) That the saved remnants of the sugar were

taken exclusive possession of by the agents of the Atlantic Mutual Insurance Company, were by them forwarded on account of that company to Montreal, and were finally turned over to the Canada Sugar Refining Company, at an agreed valuation, in part payment of the claim of the latter for total loss of cargo; (2) that the facts disclose an actual abandonment by the Canada Sugar Refining Company, to the Atlantic Mutual Insurance Company, and the acceptance by the latter of such abandonment. Owing to the prompt action of the insurance company in taking charge and control of the cargo, and in adopting the agreement of the master with the salvors, it was not necessary for the assured to go through with all the usual forms of an abandonment. Neither of the parties seems to have acted upon the supposition that any other or more formal act of abandonment was necessary; (3) that the libellant is entitled to recover the amount of the profits as valued in the policy. *Canada Sugar Refining Company* v. *Insurance Company of North America*, 609.

INTEREST.

See NEW ORLEANS DRAINAGE ASSESSMENTS, 9.

INTERNATIONAL ARBITRATION.

See LA ABRA SILVER MINING COMPANY, 3.

INTERNATIONAL LAW.

1. International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is. *The Paquete Habana*, 677.
2. At the present day, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act, it is an established rule of international law that coast fishing vessels, with their implements and supplies, cargoes and crews, unarmed, and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war. And this rule is one which prize courts, administering the law of nations, are bound to take judicial notice of, and to give effect to, in the absence of any treaty or other public act of their own government in relation to the matter. *Ib.*

INTERSTATE COMMERCE.

1. Interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities. *Addyston Pipe & Steel Co.* v. *United States*, 211.
2. The power to regulate interstate commerce, and to prescribe the rules by which it shall be governed, is vested in Congress, and when that body has enacted a statute such as the act of July 2, 1890, c. 647, entitled "an act to protect trade and commerce against unlawful restraints and monopolies," any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce, by preventing or restricting its sale, thereby regulates interstate commerce to that extent, and thus trenches upon the power of the national legislature, and violates the statute. *Ib.*
3. The contracts considered in this case, set forth in the statement of facts and in the opinion of the court, relate to the sale and transportation to other States of specific articles, not incidentally or collaterally, but as a direct and immediate result of the combination entered into by the defendants; and they restrain the manufacturing, purchase, sale or exchange of the manufactured articles among the several States, and enhance their value, and thus come within the provisions of the "act to protect trade and commerce against unlawful restraints and monopolies." *Ib.*
4. When the direct, immediate and intended effect of a contract or combination among dealers in a commodity is the enhancement of its price, it amounts to a restraint of trade in the commodity, even though contracts to buy it at the enhanced price are being made. *Ib.*
5. The judgment of the court below, which perpetually enjoined the defendants in the court below from maintaining the combination in cast-iron pipe as described in the petition, and from doing any business under such combination, is too broad, as it applies equally to commerce which is wholly within a State as well as to that which is interstate or international only. *Ib.*
6. The conceded facts from which it has been assumed in this case, as a matter of law, that the railway carriers were operating "under a common control, management or arrangement for a continuous carriage or shipment" were as follows: The several carriers transported hay from Memphis under through bills of lading, by continuous carriage, to Summerville and Charleston. The several roads shared in an agreed rate on traffic to Charleston and in a precisely equal in amount rate on traffic to Summerville. On shipments to Summerville, however, there was added to the Charleston rate the amount of the local rate from Charleston to Summerville, the benefit of which additional exaction was solely received by the local road on which

Summerville was situated. The contention that under this state of facts the carriers did not constitute a continuous line, bringing them within the control of the Act to regulate Commerce, is no longer open to controversy in this court. In *Cincinnati, New Orleans & Texas Pacific Railway* v. *Interstate Commerce Commission*, 162 U. S. 184, which was decided after this case was before the Commission and the Circuit Court, it was held under a state of facts substantially similar to that here found that the carriers were thereby subject to the Act to regulate Commerce. *Louisville & Nashville Railroad Co.* v. *Behlmer*, 648.

7. It is settled by previous decisions that the construction given in this cause by the Interstate Commerce Commission and the Circuit Court of Appeals to the fourth section of the Act to regulate Commerce was erroneous, and hence that both the Interstate Commerce Commission and the Circuit Court of Appeals mistakenly considered, as a matter of law, that competition, however material, arising from carriers who were subject to the Act to regulate Commerce could not be taken into consideration; and likewise that all competition, however substantial, not originating at the initial point of the traffic, was equally as a matter of law excluded from view. *Ib.*

8. What was decided in the previous cases was that under the fourth section of the act substantial competition which materially affected transportation and rates might under the statute be competent to produce dissimilarity of circumstances and conditions, to be taken into consideration by the carrier in charging a greater sum for a lesser than for a longer haul. The meaning of the law was not decided to be that one kind of competition could be considered and not another kind, but that all competition, provided it possessed the attributes of producing a substantial and material effect upon traffic and rate making, was proper under the statute to be taken into consideration. *Ib.*

9. It follows that while the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: *First:* The absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about, though, in the nature of things, this latter consideration may in many cases be involved in the determination of whether competition was such as created a substantial dissimilarity of condition. *Second:* That the competition relied upon be, not artificial or merely conjectural, but material and substantial, thereby operating on the question of traffic and rate making, the right in every event to be only enjoyed with a due regard to the interest of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered. *Ib.*

See CONSTITUTIONAL LAW, 3, 4, 5.

JURISDICTION.

A. Jurisdiction of the Supreme Court.

1. A judgment of the highest court of a State, upholding the validity of a tax assessed under a statute of the State, upon money deposited with a trust company in the State by a resident of another State, cannot be reviewed by this court on writ of error upon the ground that the proceedings were repugnant to the Constitution of the United States, when no such ground appears to have been taken by the plaintiff in error, or considered by any court of the State, before the final judgment. *Scudder* v. *New York Comptroller*, 32.
2. This court has no jurisdiction to review, on appeal, a judgment of a Circuit Court of Appeals, affirming a decree of the Circuit Court below which overrules the decision of a Board of General Appraisers in a port of entry, appointed under the act of June 10, 1890, c. 407, and which sustains as valid, duties levied and collected by the collector of the port into which the goods were imported. *Anglo-Californian Bank* v. *United States*, 37.
3. The United States was properly made a party defendant in this suit, in this court, in place of the Secretary of the Treasury. *Ib.*
4. The Bienville Water Supply Company was a corporation organized under the laws of Alabama, and was authorized thereby to build water works in Mobile, and to use the streets of that city for water purposes. The city and that company were authorized to contract together for the purpose of supplying the city with water. In the contract made between them under this authority there was no express provision for furnishing the inhabitants of the city with water, and no stipulation by the company that it would do so, though it was clear that the parties contemplated that the company would contract with the inhabitants to supply them with water for domestic purposes. The city was also authorized by the legislature to build or otherwise acquire water works of its own to supply water to itself and its inhabitants for the extinguishment of fires, and for sanitary and domestic purposes, and in its contract with the Bienville Company the city did not agree not to do so. It did agree to pay the company monthly for a certain number of hydrants supplied by it, but there was no averment on the part of the company that the city had repudiated said obligation or refused to make such stipulated payments, or intended to do so. The company filed a bill in equity against the city to enjoin it from making or carrying out any other contract for supplying water to its inhabitants, or for constructing a system of water works for that purpose during the continuance of said contracts and from building or acquiring a system of water works to bring water into the city during such continuance. To this bill the city demurred. The bill was dismissed. Appeal being taken to this court, a motion was made to dismiss it, joined with a motion to

affirm. *Held*, that as there were no facts averred showing that the city had violated, was violating or intended to violate its contracts with the Bienville Company, and as there was no legislation to that end, the bill was properly dismissed in the court below; and as there was color for the motion in this court to dismiss, the motion to affirm would be sustained. *Bienville Water Supply Co.* v. *Mobile*, 109.

5. *Blake* v. *McClung*, 172 U. S. 239 (which case was brought here by writ of error to the Supreme Court of the State of Tennessee), having been remanded to that court, and the mandate having gone down, the counsel of Blake and others moved for the entry of a decree placing them in the same class and on exact equality with the Tennessee creditors in respect to the distribution of the assets of the insolvent company among its creditors; but this the state Supreme Court declined to do, and entered a decree that Blake and others were entitled to participate in the assets on the basis of a broad distribution of the assets of the corporation among all of its creditors without preference or priority, as though the act of 1877 had not been passed; that there should be a computation of the aggregate indebtedness due from the corporation to its creditors of every class wherever residing, whereupon Blake and others should be paid the percentage and proportion found to be due to them on that basis; and that the residue of the estate of the insolvent company should be applied, first to the payment of the indebtedness due to the creditors of the corporation residing in Tennessee as provided in section five of the act of 1877, and then *pro rata* to the payment of the debts of the alien and non-resident creditors of said corporation other than Blake and others. To this decree Blake and others duly excepted, but, insisting that that court had not complied with the mandate of this court, applied for leave to file a petition for mandamus to compel such compliance. *Held* that, without inquiring whether the conclusions of the Supreme Court of Tennessee were or were not in harmony with the views expressed by this court, the remedy of petitioners for the alleged error in the decree of that court, if any, is by writ of error and not by mandamus, the remedy on error being not only entirely adequate, and open to be sought unrestrained by the amount involved, but, in respect of dealing with state tribunals, being manifestly the proper remedy. *In re Blake et als*, 114.

6. A party who does not take out a writ of error will not be heard to complain of adverse rulings in the court below. *Bolles* v. *Outing Company*, 262.

7. The contention, even if formally made, that plaintiffs in error were seeking to avail themselves of some right or immunity under the Constitution or laws of the United States, does not give this court jurisdiction to review the judgment of the Supreme Court of a State, where that judgment was based upon a doctrine of general law, sufficient of itself to determine the case. *Seeberger* v. *McCormick*, 274.

8. It having been decided in *McCormick* v. *Market Bank*, 165 U. S. 538, that the contract of lease there in suit was void, the plaintiff in error in that case commenced this action in a state court in Illinois to recover from citizens of that State the rent for the property which had been intended to be leased to the bank by the void lease, on the ground that they had falsely assumed corporate authority to make the void lease. Such proceedings were had in the state courts that judgment was finally rendered by the Supreme Court of that State in McCormick's favor. *Held*, that the question whether the plaintiffs in error rendered themselves liable to McCormick by reason of their false assumption of corporate authority was one of general law, and not one to be solved by reference to any law, statutory or constitutional, of the United States; and that, as no Federal question was in form presented to or passed upon by the state Supreme Court, and because its judgment was based upon matter of general and not Federal law, this court was without jurisdiction to review it. *Ib.*

9. The boundary line between the States of Illinois and Iowa is the middle of the main navigable channel of the Mississippi River; but whether in assessing taxes in Illinois on a bridge running from one State to the other, in crossing that bridge the dividing line was improperly located, is a question of fact the finding of which by a state court is not reviewable here. *Keokuk & Hamilton Bridge Company* v. *Illinois*, 626.

10. The same may be said concerning the contention as to whether the bridge was assessed at more than its value and not at the same proportion of its value as other property was. *Ib.*

11. The tax on the capital stock was not a tax on franchises conferred by the Federal government, but on those conferred by the State, and as such is not open to objection here. *Ib.*

12. The tax was not a tax on interstate commerce. *Ib.*

13. As to the objection that the entire capital stock was assessed by the state board of equalization, it is enough to say that the question that the action of that board was in violation of the Constitution of the United States, except so far as it was claimed to be an interference with interstate commerce, was not raised, and therefore cannot be considered here for the first time. *Ib.*

14. No opinion is intimated on the contention that the judgment was erroneous because the assessment, in effect, included the entire capital stock of plaintiff in error as a consolidated corporation. *Ib.*

15. On the facts, as stated below, it is *held* that the action of the Circuit Court in remanding the cause after its removal on the first application is not open to revision on this writ of error; and that, as the state court did not err in denying the second application, the motion to affirm must be sustained, as the question of the effect of that remanding order gave color for the motion to dismiss. *Whitcomb* v. *Smithson*, 635.

16. In a case brought up by writ of error from the Supreme Court of a State, it appeared from a supplemental transcript of the record that proceedings for a removal of the case to the Circuit Court of the United States were taken in the court of original jurisdiction, and were denied; but that no question regarding these proceedings was made in the Supreme Court of the State, and the supplemental transcript was not filed in such Supreme Court until after the case had been decided there. *Held:* that as no certiorari was issued to bring it up, and no motion or order was made for leave to file it, it could not be considered here. *Telluride Power Transmission Co.* v. *Rio Grande Western Railway Co.*, 639.

17. By Rev. Stat. section 2339, whenever, "by priority of possession," rights to the use of water for mining purposes have vested and accrued, and the same are recognized by local customs and laws, "the possessors and owners of such vested rights shall be maintained and protected in the same." *Held:* that a question of fact, as to which party had priority of possession, was not a Federal question. *Ib.*

18. The jurisdiction of this court in cases brought up by writ of error to a state court does not extend to questions of fact, or of local law, which are merely preliminary to, or the possible basis of, a Federal question. *Ib.*

19. Under the act of Congress of March 3, 1891, c. 517, this court has jurisdiction of appeals from all final sentences and decrees in prize causes, without regard to the amount in dispute, and without any certificate of the District Judge as to the importance of the particular case. *The Paquete Habana*, 677.

See BANKRUPTCY; DIVORCE;
COPYRIGHT, 3; PUBLIC LAND, 21;
TAX AND TAXATION.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

See COPYRIGHT, 2.

C. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

See HABEAS CORPUS.

D. JURISDICTION OF TERRITORIAL COURTS.

Since the act of Congress of March 3, 1891, c. 539, establishing the Court of Private Land Claims, the courts of the Territory of Arizona have jurisdiction, as between private parties, to determine whether a title under a Mexican grant, which has not been confirmed or rejected by, and is not pending before Congress, and which is asserted to have been complete and perfect by the law prevailing in New Mexico before the cession of the country to the United States, was complete and perfect

before the cession. *Ainsa* v. *New Mexico & Arizona Railroad Co.*, 76.

LA ABRA SILVER MINING COMPANY.

1. The act of December 28, 1892, c. 14, 27 Stat. 409, authorizing and directing the Attorney General to bring suit in the Court of Claims against the La Abra Silver Mining Company, etc., etc., which was signed by the President during a recess of Congress, was not invalid by reason thereof; but it is not decided whether the President can or cannot sign a bill after the final adjournment of Congress for the session. *La Abra Silver Mining Co.* v. *United States*, 423.
2. The suit brought by the Attorney General involved rights capable of judicial determination and was a "case" within the meaning of the clause of the Constitution extending the judicial power of the United States to all cases in law and equity arising under that instrument, the laws of the United States and the treaties made by it or under its authority. The act did not in any wise trench upon the constitutional functions of the President. Nor was it simply ancillary or advisory to him. Whatever decree was rendered by the Court of Claims was, unless reversed, binding and conclusive upon the United States and the defendants. *Ib.*
3. The act was not liable to the objection that it was inconsistent with the principles underlying international arbitration. On the contrary, such legislation is an assurance in the most solemn and binding form that the Government of this country will exert all the power it possesses to enforce good faith upon the part of citizens who, asserting that they have been wronged by the authorities of another country, seek the intervention of their Government to obtain redress. *Ib.*
4. This court was entitled to look at all the evidence in the cause on the issue as to fraud, because the act did not contemplate a special finding by the Court of Claims of the ultimate facts established by the evidence. *Ib.*
5. The question stated in the act of 1892 — whether the award in question was obtained as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys or assigns — is answered in the affirmative as to the whole sum included in the award. *Ib.*

LIBEL.

The plaintiff in error sued the defendants in error in a state court of the State of Washington, to recover damages for a libel alleged to have been contained in the pleadings in a suit against him, instituted by them in the Circuit Court of the United States. The trial court dismissed the action, and its judgment was affirmed by the highest court of the

State, which judgment so affirmed was brought to this court by writ of error. A motion being made to dismiss the action or affirm the judgment below, *Held*, that there was color for the motion to dismiss, and therefore the motion to affirm could be considered; and as the judgment of the court below did not deprive the plaintiff of any right, privilege or immunity secured by the Constitution or laws of the United States, it should be affirmed. *Abbott* v. *Tacoma Bank of Commerce*, 409.

LIMITATION, STATUTES OF.

A. OF THE UNITED STATES.

See COPYRIGHT, 2, 3.

B. OF STATES AND TERRITORIES.

Louisiana. See NEW ORLEANS DRAINAGE ASSESSMENTS, 1, 2, 5.

MARRIED WOMAN.

See DISTRICT OF COLUMBIA.

MASTER AND SERVANT.

See RAILROAD.

MINERAL LAND.

See JURISDICTION, A, 17;
PUBLIC LAND, 19, 20, 21.

MOTION TO DISMISS.

See LIBEL.

NEW ORLEANS DRAINAGE ASSESSMENTS.

1. Following the decisions of the Supreme Court of Louisiana, this court holds that the drainage warrants of the city of New Orleans, in question in this case, being neither bills of exchange, nor promissory notes, nor notes payable to order or bearer, nor effects negotiable by indorsement or delivery, are not included within the terms of Article 3540 of the Civil Code of Louisiana, prescribing certain actions therein named; and are not prescribed by the statutes of the State. *New Orleans* v. *Warner*, 120.
2. The city of New Orleans, having voluntarily assumed the obligations of a trustee with respect to the fund to be raised by the collection of

drainage assessments, cannot set up the prescription contained in Article 3547 of the Code against an application which, as such trustee, it had undertaken and had failed to perform — the rule being well settled that, in an action by a *cestui que trust* against an express trustee, the statute of limitations has no application, and no length of time is a bar. *Ib.*

3. It is immaterial whether the assessments against the city itself for the drainage of public property were reduced to judgments or not: by reducing its own claim to judgment, it neither ceased to be debtor nor trustee. *Ib.*
4. The judgment and decree in *Peake* v. *New Orleans*, 139 U. S. 342, cannot be considered as a controlling authority in this case, the facts being different, as shown in the opinion of the court in this case; and it would be inequitable to permit the city to set up that decision as an excuse for its failure to collect these assessments. *Ib.*
5. A judgment for taxes does not differ from any other judgment in respect to its conclusiveness, and the city of New Orleans cannot, after the lapse of more than twenty years, question its liability upon the judgments against it for the amount of these assessments. *Ib.*
6. It was the intention of the amendment of 1874 to the constitution of Louisiana, limiting the power of New Orleans to contract debts thereafter, to validate the issues of drainage warrants, some of which are questioned in this suit, not only for the work done, but for the property purchased by the city, in case it should elect to do the work itself. *Ib.*
7. The fact that the city chose in 1876 to pay for property which Van Norden bought from the Ship Canal Company in 1872 six times as much as he then paid for it, is one that cannot be considered here; as, from the decision in *Fletcher* v. *Peck*, 6 Cranch, 87, to the present time this court has uniformly refused to inquire into the motives of legislative bodies. *Ib.*
8. The objection that the decree finds the city a debtor to the complainant in the amount of the warrants is more apparent than real, since it also declares that he is entitled to be paid out of the drainage assessments, refers it to a master to state an account of such assessments, and provides for an absolute decree against the city only if the fund established by the accounting shall be sufficient, and for a *pro rata* decree if such fund be not sufficient to pay all the warrant holders in full. *Ib.*
9. The liability of the city to pay interest was conditioned upon the presentation of the warrants and the indorsement upon them of the date of such presentation; but the commencement of suit was a sufficient demand to charge the defendant the interest from that day, at the rate specified in the contract. *Ib.*

PRACTICE.

1. Allowing and signing a bill of exceptions is a judicial act, which can only be performed by the judge who sat at the trial; and section 953 of the Revised Statutes is intended to provide and does provide that no bill of exceptions can be deemed sufficiently authenticated, unless signed by the judge who sat at the trial, or by the presiding judge if more than one sat. *Malony* v. *Adsit*, 281.
2. This action being an action of ejectment, the provision in § 3524 of the Oregon Code with regard to actions for forcible entry and detainer have no application to it. *Ib.*
3. The appeal in this case having been allowed within six months after the receipt by the Attorney General of the statement of the case by the trial attorney, and the action of the trial attorney having been approved by one of the justices of the trial court, there is no sufficient reason for the motion to dismiss, this court having the power under its rules to notice plain errors, even when not assigned. *United States* v. *Pena*, 500.
4. An appeal from the Court of Private Land Claims can be allowed by one of the Associate Justices of the court. *Ib.*

See JURISDICTION, A, 1;
PUBLIC LAND, 2.

PRIZE OF WAR.

See ADMIRALTY, 10, 11, 12, 13.

PUBLIC LAND.

1. The act of Congress of December 22, 1858, 11 Stat. 374, confirming a grant of pueblos to Indians, operated to release to the Indians all the title of the United States to the land covered by it as effectually as if it contained in terms a grant *de novo;* and such action of Congress is not subject to judicial review. *United States* v. *Conway*, 60.
2. The United States is a proper and necessary party to a suit brought in the Court of Private Land Claims for confirmation of a private land claim, covering pueblos previously so granted to Indians, and can follow the litigation through all the courts that are given jurisdiction of the case. *Ib.*
3. When a title to public land has been confirmed by Congress, it should be respected by the Court of Private Land Claims; but conflicting claimants may resort to the ordinary remedies at law. *Ib.*
4. A claim in the Court of Private Land Claims for land within the limits of a mine grant, which grant has been confirmed by Congress and a patent issued therefor, must be rejected by that court. *Real de Dolores del Oro* v. *United States*, 71.
5. Section 14 of the act of March 3, 1891, c. 539, 26 Stat. 854, 861, estab-

lishing that court, which provides for a personal judgment against the United States in cases where the land decreed to any claimant, under the provisions of the act, shall have been sold or granted by the United States, applies only to cases where such lands have been sold or granted as public lands, for a consideration which equitably belongs to the owner of the land, and not to cases where the Government has merely released its interest to one apparently holding a good title under a Spanish or Mexican grant, which subsequently turns out to be invalid by reason of an older or better title. *Ib.*

6. Under the laws of Mexico prior to 1848, an alcalde had no power to make a grant of public lands. *Hays* v. *United States*, 248.
7. Where petitioner produced oral testimony tending to show a grant of lands by the governor of New Mexico, and an order upon the alcalde to put the grantee in possession; and also gave evidence tending to show that these documents were afterwards lost or destroyed, and at the same time produced a grant by the alcalde in which no reference whatever was made to a prior grant by the governor, it was *held* that the grant of the alcalde was inconsistent upon its face with the alleged grant by the governor, and with the other circumstances in the case, and that the claim was properly rejected by the Court of Private Land Claims. *Ib.*
8. Possession of land since the treaty of Guadalupe Hidalgo, in 1848, will not of itself give a valid title to land; nor will it create the presumption of a valid grant where a void grant appears to have been made; or in case the surrounding circumstances are incompatible with the existence of a valid grant. *Ib.*
9. Generally, in public surveys, a meander line is a line which courses the banks of navigable streams or other navigable waters; but in this case it distinctly appears from the field notes and the plat, that the deputy surveyor by whom it was surveyed in 1834 and 1835, and whose acts were approved by the surveyor general, stopped his surveys at what he called a marsh, which intervened between the point where he stopped and the waters of Lake Erie, and thus limited the land which the United States in 1844, following that survey, patented to the person under whom the appellant claims, and thus excluded the marsh, leaving to subsequent measurements the actual determination of the line of separation between the lands thus patented, and those which the Government did not propose to convey. *Niles* v. *Cedar Point Club*, 300.
10. One receiving a patent will not ordinarily be heard to insist that by reason of an error on the part of a surveyor, more land was bought than was paid for, or than the Government was offering for sale. *Ib.*
11. This marsh was properly held not to be regarded as land continuously submerged. *Ib.*
12. The grant of lands, in this case, set forth at length in the opinion of the court, was a grant in severalty, and not one of a single large tract

to several persons, to be by them held in common, or distributed among each other. *United States* v. *Pena*, 500.

13. This grant, having been made after the signing of the treaty of Guadalupe Hidalgo, it was not within the power of the alcalde to change it by directing grants to additional persons, not included in the original grant; and the whole proceeding may be ignored, except so far as it indicates those who took title under the original grant, or discloses those who were their successors in interest. *Ib.*
14. Upon a long and uninterrupted possession of lands in Mexico, beginning long prior to the transfer of the territory in which they are situated to the United States, and continuing after that transfer, the law bases presumptions as sufficient for legal judgment, in favor of the possessor, in the absence of rebutting circumstances, which do not exist in this case. *United States* v. *Chavez*, 509.
15. This court holds in this case that there is no proof of any grant to the petitioner or those under whom he claims, and affirms the judgment of the court below in favor of the United States. *Peabody* v. *United States*, 546.
16. The claim of adverse possession (by those under whom the petitioner claims) down to the time of the occupation by the United States, is not sustained by the proof. *Ib.*
17. In Mexico, in 1831, a departmental assembly or territorial deputation had no power or authority to make a grant of lands; and the fact that the governor presided at a meeting of the territorial deputation at the time such a grant was made, makes no difference, as the power to make the grant was exclusively in the governor, and the territorial deputation had no jurisdiction in the matter. *Chavez* v. *United States*, 552.
18. By the act of July 2, 1864, c. 217, a grant of public land was made to the Northern Pacific Railroad Company to aid in the construction of its railroad and telegraph line. A small tract of this grant is the subject of this action of ejectment. In October, 1868, one Scott made a preemption declaratory statement regarding this tract, and settled upon it in 1869, but abandoned it in the same year and never returned. In October, 1872, he filed an amended statement excluding the land in controversy. On February 21, 1872, the company filed its map of general route through Montana. On the 22d of April, 1872, the Commissioner of the General Land Office, by direction of the Secretary of the Interior transmitted to the local land office in Montana a diagram showing the location of the road in the district in which the subject of controversy was situated, and directed the withholding from sale or location, preëmption or homestead entry, of the odd-numbered sections within forty miles of the general route of the railroad. On May 3, 1872, McLean, a citizen of the United States, duly qualified to enter land, made a homestead entry of the tract in controversy in this case. On May 6, 1872, the diagram and order sent April 22 were received

at the local land office and filed there. In the autumn of 1872 McLean placed a small building on the land in which he spent his nights until the spring of 1873 when he removed and never after resided there or made improvements. Proceedings were taken to cancel his entry, and it was cancelled in September, 1879. In July, 1882, the plat of definite location was filed, and the land in controversy is within forty miles of the general route, and within twenty miles of the line of definite location. In August, 1882, McLean died, leaving a will devising this land to his widow, which was duly probated. In March, 1883, McLean's widow applied, as his widow under the act of June 15, 1880, c. 227, 21 Stat. 237, to purchase the tract. *Held:* (1) That whatever rights Scott might have acquired by his original declaratory statement, were lost by his amended declaratory statement; (2) that McLean had all the rights which attached to a valid entry, and might have proceeded under the act of June 15, 1880, c. 227, 21 Stat. 237, to make the purchase thereby authorized; (3) that his widow, having had this tract devised to her by her husband's will, duly probated, was entitled to purchase the tract as the devisee of her husband, although her application for it was made as his widow. *Northern Pacific Railroad* v. *Amacker*, 564.

19. The provision in Rev. Stat. § 2326 for the trial of adverse claims to a mining patent "by a court of competent jurisdiction," does not relate to any particular court, state or Federal; but it was the intention of Congress in this legislation to leave open to suitors all courts competent to determine the question of the right of possession. *Blackburn* v. *Portland Gold Mining Co.*, 571.

20. A controversy between rival claimants under that and the previous section can be properly determined by a state court, if the usual conditions of Federal jurisdiction do not exist, and the judgment of the Supreme Court of a State in such case cannot be reviewed by this court, simply because the parties were claiming rights under a Federal statute. *Ib.*

21. The court does not undertake to say that no case can arise under this legislation, which turns upon a disputed construction, and therefore presents a question essentially Federal in its nature. *Ib.*

See INDIAN, 1, 3, 4, 5;
JURISDICTION, D.

PUBLIC MONEYS OF THE UNITED STATES.

Money derived from the sale of a vessel captured in 1863 as a blockade runner, which, pending proceedings in court for condemnation and forfeiture, was deposited by the marshal to await the further order of the court in a national bank which was a special or designated depositary of public moneys, and which deposit was in part lost by reason of the failure of the bank, is not public money of the United States

which may be recovered from it under the act of March 3, 1887, c. 359, 24 Stat. 505, generally known as the Tucker Act. *Coudert* v. *United States*, 178.

RAILROAD.

1. The negligence of a conductor of a freight train is the negligence of a fellow-servant of a brakeman on the same train, who was killed by an accident occurring through that negligence. *New England Railroad Co.* v. *Conroy*, 323.
2. The negligence of such conductor is not the negligence of the vice, or substituted, principal or representative of the railroad company running the train, and for which that corporation is responsible. *Ib.*
3. The general rule of law is that one who enters the service of another takes upon himself the ordinary risks of the negligent acts of his fellow-servants in the course of the employment. *Ib.*
4. An employer is not liable for an injury to one employé occasioned by the negligence of another engaged in the same general undertaking; it is not necessary that the servants should be engaged in the same operation or particular work; it is enough, to bring the case within the general rule of exemption, if they are in the employment of the same master, engaged in the same common enterprise, both employed to perform duties tending to accomplish the same general purposes, or, in other words, if the services of each in his particular sphere or department are directed to the accomplishment of the same general end; and accordingly, in the present case, upon the facts stated, the conductor and the injured brakeman are to be considered fellow-servants within the rule. *Ib.*
5. While the opinion in *Chicago, Milwaukee & St. Paul Railroad Co.* v. *Ross*, 112 U. S. 377, contains a lucid exposition of many of the established rules regulating the relations between masters and servants, and particularly as respects the duties of railroad companies to their various employés, it went too far in holding that a conductor of a freight train is, *ipso facto*, a vice principal of the company; and in so far as it is to be understood as laying down, as a rule of law to govern in the trial of actions against railroad companies, that the conductor, merely from his position as such, is a vice principal, whose negligence is that of the company, it must be deemed to have been overruled, in effect if not in terms, in the subsequent case of *Baltimore & Ohio Railroad* v. *Baugh*, 149 U. S. 368. *Ib.*

See CONTRACT, 1.

STATUTE.

A. CONSTRUCTION OF.

In the construction of statutes, prior acts may be cited to solve, but not to create an ambiguity. *Hamilton* v. *Rathbone*, 414.

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 1;
BANKRUPTCY;
CONSTITUTIONAL LAW, 6;
COPYRIGHT, 1, 2, 6;
DISTRICT OF COLUMBIA;
INTERSTATE COMMERCE, 2;
JURISDICTION, A, 2, 17, 19; D;
LA ABRA SILVER MINING CO., 1, 5;
PUBLIC LAND, 1, 5, 18, 19;
PUBLIC MONEYS OF THE UNITED STATES.

C. STATUTES OF STATES AND TERRITORIES.

Arizona. *See* DIVORCE, 4.
Indiana. *See* CONSTITUTIONAL LAW, 7.
Louisiana. *See* NEW ORLEANS DRAINAGE ASSESSMENT, 1, 2; TAX AND TAXATION, 2.
Massachusetts. *See* INSOLVENT LAWS OF STATES.
New Jersey. *See* CONSTITUTIONAL LAW, A, 2.
New York. *See* CORPORATION, 1.
Oregon. *See* PRACTICE, 2.
Tennessee. *See* JURISDICTION, A, 5.

D. FOREIGN STATUTES.

Canada. *See* ADMIRALTY, 4.
Mexico. *See* PUBLIC LAND, 6.

TAX AND TAXATION.

1. The collection of taxes under the authority of a State will not be enjoined by a court of the United States on the sole ground that the tax is illegal, but it must appear that the party taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case within some recognized head of equity jurisdiction. *Arkansas Building & Loan Association* v. *Madden*, 269.
2. In Texas the law is established that when a person, by compulsion of the color of legal process, or of seizure of his person or goods, pays money unlawfully demanded, he may recover it back. *Ib.*
3. Inasmuch as the bill in this case contains nothing to indicate inability on the one hand to pay the franchise tax in question, or, on the other, to respond in judgment if it were found to have been illegally exacted, and sets up no special circumstances justifying the exercise of equity jurisdiction other than consequences which complainant can easily avert without loss or injury, the court holds that the bill cannot be sustained. *Ib.*
4. Section 7 of Chapter 106 of the Louisiana Statutes of 1890, after declaring "that it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation," con-

tained the following provision: "This shall apply with equal force to any person or persons representing in this State business interests that may claim a domicil elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicil of said non-resident, his agent or representative." The defendant in error who was domiciled in the city of New York was the owner of credits which were evidenced by notes largely secured by mortgages on real estate in New Orleans; and these notes and mortgages were in the city of New Orleans, in possession of an agent of the defendant in error, who collected the interest and principal as it became due and deposited the same in a bank in New Orleans to her credit. *Held*, that under the act of 1890, as interpreted by the Supreme Court of the State, this property in the hands of the agent was subject to taxation in New Orleans, and that such taxation did not infringe any right secured by the Federal Constitution. *New Orleans* v. *Stempel*, 309.

5. Conceding, as a matter of fact, that the assessment in this case was technically in the wrong name, the error is not one that will justify equitable relief by injunction. *Ib.*
6. Under the issue presented by the pleadings no question of overvaluation was before the court. *Ib.*
7. The rule in such a case is that the Federal courts follow the construction placed upon the statute by the state courts, and in advance of such construction they should not declare property beyond the scope of the statute and exempt from taxation unless it is clear that such is the fact. *Ib.*
8. It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicil of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin; notes and mortgages are of the same nature. *Ib.*

See JURISDICTION, A, 9 to 14.

TREATY.

The construction of treaties is the peculiar province of the judiciary; and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself. *Jones* v. *Meehan*, 1.

See INDIAN.

TRUST AND TRUSTEE.

See NEW ORLEANS DRAINAGE ASSESSMENTS, 1, 2, 3.